



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No. IT-04-82-A
Date: 19 May 2009
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Liu Daqun
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

Decision: 19 May 2009

PROSECUTOR

v.

**LJUBE BOŠKOSKI
JOHAN TARČULOVSKI**

PUBLIC

**DECISION ON ALTERNATIVE PROSECUTION MOTION TO
VARY NOTICE OF APPEAL**

The Office of the Prosecutor:

Mr Paul Rogers

Counsel for Ljube Boškosi:

Ms. Edina Rešidović
Mr. Guénaél Mettraux

Counsel for Johan Tarčulovski:

Mr. Alan M. Dershowitz
Mr. Nathan Z. Dershowitz
Mr. Antonio Apostolski
Mr. Jordan Apostolski

1. The Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Appeals Chamber” and “Tribunal”, respectively) is seized of an alternative request by the Office of the Prosecutor (“Prosecution”) to vary its notice of appeal (“Alternative Request”) submitted on 16 December 2008.¹ Ljube Boškoski (“Boškoski”) responded to the Alternative Request on 23 December 2008² and the Prosecution filed a reply on 24 December 2008.³

I. PROCEDURAL BACKGROUND

2. On 10 July 2008, Trial Chamber II acquitted Boškoski of all counts in the Indictment, and ordered his release under Rule 99(A) of the Rules.⁴ The Prosecution has appealed that portion of the Trial Judgement.⁵

3. Boškoski filed his Respondent’s Brief on 1 December 2008,⁶ which claims that the Prosecution included three “new” grounds of appeal in the Prosecution Appeal Brief (“Allegedly new Grounds of Appeal”).⁷ Concerning the Allegedly new Grounds of Appeal, Boškoski asserts that they should be summarily dismissed because: (1) the Prosecution never raised them at trial and they are therefore waived;⁸ and (2) they were never mentioned in the Notice of Appeal.⁹ In the Prosecution Reply Brief, it stated, *inter alia*, that the Allegedly new Grounds of Appeal were raised at trial,¹⁰ and that the Prosecution has not varied its grounds of appeal since the grounds remain as they were in the Notice of Appeal.¹¹ Furthermore, the Prosecution Reply Brief contains the Alternative Request in which the Prosecution moves “under Rule 108 to vary the [Notice of

¹ The Alternative Request has been made in the Prosecution’s Reply Brief, filed confidentially on 16 December 2008 (“Prosecution Reply Brief”), *see* para. 14. A public redacted version of the Prosecution Reply Brief was filed on 24 December 2008, *see* Notice of Filing of Public Redacted Version of Prosecution’s Reply Brief.

² Boškoski Defence Response to Prosecution Motion to Vary Grounds of Appeal in Notice of Appeal, filed on 23 December 2008 (“Response”).

³ Prosecution Response to Boškoski Submission of 23 December 2008, 24 December 2008 (“Reply”).

⁴ *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-T, Judgement, 10 July 2008 (“Trial Judgement”), para. 606.

⁵ Prosecution Appeal Brief, filed confidentially on 20 October 2008. A public redacted version of the Prosecution’s Appeal Brief was filed on 3 November 2008; *see* Notice of Filing of Public Redacted Version of Prosecution’s Appeal Brief, 3 November 2008; Notice of Filing of Corrected Public Redacted Version of Prosecution’s Appeal Brief, 4 November 2008, paras 103-104.

⁶ Boškoski Defence Respondent Brief, filed on 1 December 2008 (“Respondent Brief”).

⁷ Respondent Brief, paras 148-230.

⁸ Respondent Brief, paras 150, 184, 203, 214.

⁹ Respondent Brief, paras 151, 185, 204, 214.

¹⁰ Prosecution Reply Brief, para. 9.

¹¹ Prosecution Reply Brief, paras 10-13.

Appeal] to include the ‘new’ arguments” should the Appeals Chamber agree with Boškoski’s arguments with respect to the summary dismissals.¹²

4. In his Response to the Alternative Request, Boškoski states that the Prosecution has failed to: (1) establish a valid legal basis for the Alternative Request;¹³ and (2) demonstrate “good cause” under Rule 108 to amend its notice of appeal.¹⁴ Boškoski requests that the Alternative Request be dismissed or, alternatively, that he be given leave to supplement his Respondent Brief in relation to the Allegedly new Grounds of Appeal.¹⁵ The Prosecution replies that Boškoski’s arguments for a summary dismissal should be rejected and that the Appeals Chamber, in so doing, need not consider the Alternative Request.¹⁶

II. DISCUSSION

5. The Appeals Chamber notes that it is undisputed¹⁷ that the Alternative Request only arises as an alternative counterargument of the Prosecution to Boškoski’s request for summary dismissal of the Allegedly new Grounds of Appeal. As Boškoski’s request for summary dismissal refers to the merits of this appeal, which will be considered in the appeal judgement,¹⁸ the Appeals Chamber finds that it is premature to decide at this stage whether the Alternative Request is warranted.¹⁹

III. DISPOSITION

For the foregoing reasons, the Appeals Chamber **DECLINES** to decide the Alternative Request at this stage of the appellate proceedings.

Done in English and French, the English text being authoritative.

Done this nineteenth day of May 2009, at The Hague, The Netherlands



Judge Patrick Robinson
Presiding

[Seal of the Tribunal]

¹² Prosecution Reply Brief, para. 14.

¹³ Response, paras 9-13.

¹⁴ Response, paras 14-21.

¹⁵ Response, paras 24-25.

¹⁶ Reply, para. 2.

¹⁷ See Response, para. 6; Reply, para. 1.

¹⁸ Should a supplement to the Respondent Brief be considered necessary or warranted, the Appeals Chamber will communicate this in due course.

¹⁹ Cf. *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Decision on Motion of Blagoje Simić for Disclosure of Evidence, 23 September 2004, p. 3; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Appeal Judgement, 17 March 2009, fn. 983.